IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/04/2003

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

Writ Petition No.3605 of 1996

M/s. Japs Tech Engineers Private Ltd.
11, SIDCO Industrial Estate
Ambattur, Madras 600 098, rep. by its
Managing Director Mr.K. Jagannathan. .. Petitioner

-Vs-

1. The Recovery Officer
Employees State Insurance Corporation
143, Sterling Road
Madras 600 034.

2. M/s. Dev Engineering Enterprises
Plot No.1235, 18th Main Road
Anna Nagar West, Madras 600 040
rep. by its Sole Proprietor
Mr.G. Gopal Rao.

3. UCO Bank
No.7, Devaraja Mudali Street
Madras 79. .. Respondents

Petition under Article 226 of the Constitution of India praying for the issue of writ of Certiorari as stated therein.

For Petitioner : Mr.V. Karthic

For Respondent-1 : Mr.G. Desappan

For Respondents 2&3 : No appearance

:O R D E R

By consent, the writ petition itself is taken up for hearing.

2. The petitioner assails a prohibitory order dated 14.3.1996 passed by the Recovery Officer, by exercising the powers conferred under Section 45(g)(3)(x) read with Sections 45-C and 45-H of the Employees State Insurance Act, 1948 (hereinafter referred to as the 'ESI Act'), for the failure of

arrears due by the second respondent in respect of the Certificate dated 7.7.1995 amounting to a sum of Rs.1,00,708.07 and the interest payable under Section 39(5)(1) of the ESI Act.

3. According to the learned counsel for the petitioner, the Recovery Officer has no jurisdiction to pass the impugned prohibitory order. To buttress the above submission, the learned counsel for the petitioner has invited my attention to Section 45-D(1) and 45-G(1) of the ESI Act, which reads as follows.
Section 45-D:
" Recovery Officer to whom certificate is to be forward. -- (1) The authorised officer may forward the certificate referred to in section 45C to the Recovery Officer within whose jurisdiction the employer -
(a) carries on his business or profession or within whose jurisdiction the principal place of his factory or establishment is situate; or

(b) resides or any movable or immovable property of the factory or establishment or the principal or immediate employer is situate.
(2) ... "

Section 45-G:
" Other modes of recovery. -- (1) Notwithstanding the issue of a certificate to the Recovery Officer under Section 45C, the Director General or any other officer authorised by the Corporation may recover the amount by any one or more of the modes provided in this section.
(2) ...
(3) ... "

4. Argued that while Section 45-D(1) of the ESI Act empowers the authorised officer to forward the certificate to the Recovery Officer to recover the arrears, Section 45-G(1) of the ESI Act does not specifically empowers the Recovery Officer to pass the prohibitory order even though such power is conferred on the Director General or any officer authorised by the Corporation to recover the amount. Alternatively, the petitioner undertakes to pay the said dues directly to the first respondent in equal monthly instalments.

5. Mr.G. Desappan, learned counsel for the first respondent Corporation, inviting my attention to the averments in paragraph 7 of the counter affidavit, contends that the Recovery Officer has been authorised by the Corporation to exercise the powers under Section 45-G of the ESI Act to recover the dues from the petitioner.

6. After giving careful consideration to the submissions of both sides, I am satisfied with the explanation offered by the learned counsel for the first respondent Corporation that the Recovery Officer has been authorised by the Corporation to exercise the power under Section 45-G of the Act to recover the dues from the petitioner. Hence, I do not find any merit in the contention of the petitioner that the Recovery Officer has no jurisdiction to pass the impugned prohibitory order. However, the petitioner is permitted to pay the dues in six equal monthly instalments, as admitted by the learned

counsel for the petitioner and the first instalment shall be made on or before 5.5.2 003. Till then, the impugned prohibitory order is suspended. In default of any of the monthly instalment, the impugned prohibitory order shall be given effect to automatically.

The writ petition is disposed of accordingly. No costs. WMP Nos.57 97 of 1996 and 4063 of 2001 are closed.

Index : Yes
Internet : Yes

kpl

To

The Recovery Officer
Employees State Insurance Corporation
143, Sterling Road, Madras 600 034.